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this Memorandum Decision shall not be  
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any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the  
case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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MARK SIDLE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 76A04-0701-CR-32

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APPEAL FROM THE STEUBEN SUPERIOR COURT  
The Honorable William C. Fee, Judge  
Cause No. 76D01-0509-FD-942

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**July 12, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Mark Sidle appeals his sentence for Class D felony auto theft. We affirm.

### **Issue**

The sole issue Sidle raises on appeal is whether the trial court could properly enhance his sentence and also require that it run consecutive to another sentence.

### **Facts**

On August 13, 2005, Sidle failed to report to the Steuben County jail to serve a sentence of 180 days for public intoxication. He was charged on August 24, 2005, with Class D felony failure to return to lawful detention. On September 11, 2005, Sidle stole a vehicle, drove it to Ohio, and crashed it. He was charged with Class D felony auto theft.

Pursuant to a plea agreement, Sidle pled guilty to both offenses. The plea agreement provided that the sentences would be at the court's discretion, the sentences would be consecutive, and Sidle would pay restitution to the owner of the vehicle. The State agreed not to file an habitual offender charge against Sidle.

The trial court accepted the plea agreement. It sentenced Sidle to one year for failure to return to lawful detention, consecutive to three years for auto theft, and restitution of \$3,460 to the owner of the vehicle. Sidle now appeals his sentence for auto theft.

## Analysis

Sidle contends that under Indiana Code Section 35-50-2-1.3, the trial court could not properly enhance his sentence for auto theft and order that sentence to run consecutive to his sentence for failure to return to unlawful detention. Section 35-50-2-1.3 provides:

- (a) For purposes of sections 3 through 7 of this chapter, “advisory sentence” means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.
- (b) Except as provided in subsection (c), a court is not required to use an advisory sentence.
- (c) In imposing:
  - (1) consecutive sentences in accordance with IC 35-50-1-2;
  - (2) an additional fixed term to an habitual offender under section 8 of this chapter; or
  - (3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

With regard to consecutive sentences, Indiana Code section 35-50-1-2 provides:

- (c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:
  - (1) aggravating circumstances in IC 35-38-1-7.1(a); and
  - (2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

This court has split on the interpretation of this statute. Compare White v. State, 849 N.E.2d 735, 743 (Ind. Ct. App. 2006), trans. denied (holding that when imposing consecutive sentences, the “appropriate advisory sentence” for an episode of non-violent criminal conduct is the advisory sentence for a felony that is one class of felony higher than the most serious of the felonies for which the person has been convicted but that there is no other limitation on imposition of consecutive sentences) with Robertson v. State, 860 N.E.2d 621, 625 (Ind. Ct. App. 2007) trans. granted (holding that when imposing consecutive sentences, the trial court was required to use the advisory sentence for that offense).

Sidle relies upon the reasoning in Robertson to support his contention that the sentence for Class D felony auto theft should have been limited to one and one-half years, the advisory sentence for a Class D felony. Shortly after Sidle submitted his brief, our supreme court granted transfer and vacated Robertson.

We continue to find the reasoning of White persuasive. Until our supreme court directs otherwise, we will review the trial court’s decision to impose consecutive

sentences for abuse of discretion, and we consider the appropriate advisory sentence for an episode of non-violent conduct to be the advisory sentence for a felony which is one class of felony higher than the most serious of the felonies for which the defendant has been convicted. White, 849 N.E.2d at 743; Luhrsen v. State, 864 N.E.2d 452, 456 (Ind. Ct. App. 2007) trans. pending; Barber v. State, 863 N.E.2d 1199, 1212 (Ind. Ct. App. 2007). Section 35-50-2-1.3 places no other limit on a trial court's discretion to enhance sentences running consecutively. See White, 849 N.E.2d at 743.

The trial court sentenced Sidle to one year for the failure to return to lawful detention conviction and three years for the auto theft conviction. The convictions do not stem from “a single episode of criminal conduct”; therefore, no limitation applies under Indiana Code Section 35-50-1-2. See Reynolds v. State, 657 N.E.2d 438, 441 (Ind. Ct. App. 1995). The trial court sentenced Sidle in accordance with the plea agreement. The court noted that Sidle had an extensive criminal history and sentenced him to consecutive sentences.<sup>1</sup> We conclude that the trial court did not abuse its discretion in sentencing Sidle to an enhanced sentence for auto theft consecutive to a one-year sentence for failure to return to lawful detention.

### **Conclusion**

The trial court did not abuse its discretion when it enhanced Sidle's sentence for auto theft and required that it run consecutively to another sentence. We affirm.

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<sup>1</sup> Sidle does not appeal the appropriateness of his sentence under Indiana Appellate Rule 7(B).

Affirmed.

NAJAM, J., and RILEY, J., concur.